

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1947 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JHALA GOVOBHA SANTUBHA

Versus

DEPUTY SECRETARY

Appearance:

MR HASHIM QURESHI for Petitioner

MRS MANISHA LAVKUMAR AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/11/1999

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, petitioner has brought in challenge notification dated 17.2.1999 issued by Deputy Secretary to the Government of Gujarat, Panchayat, Rural Housing and Rural Development Department, Sachivalaya, Gandhinagar, whereby village Rantej, Taluka Bauchraji, District Mehsana, has been merged with village Pratapnagar by bifurcating Taluka Chanasma, District

Mehsana, in exercise of the powers conferred under Section 7 of the Gujarat Panchayats Act, 1993 ('the Act' for short).

2. Brief facts of the petitioner's case is as under:

2.1. In Bauchraji Taluka, Rantej village is situated and the said village was taking care of other three surrounding villages i.e., Pratapnagar, Rajpura and Ramnagar. There was one Panchayat for the said three villages but the constituency were different and each constituency was having their own candidate and they were participating at the time of the meeting of the Panchayat.

2.2. A proposal to separate Pratapnagar from Rantej and designate it as a separate Panchayat was made and, therefore, consent to separate Pratapnagar from Rantej Panchayat was given. It is the say of the petitioner that in the election which was held on 29.9.1997, the petitioner who was connected with Rashtriya Janta Party contested independently on the symbol of Elephant and defeated the candidate of ruling party and he was declared as Sarpanch. It is further case of the petitioner that the Government by issuing notification dated 17.2.1999 has merged Rantej with Pratapnagar Panchayat and constituted one Gram Panchayat and tried to misuse powers by appointing Administrator in Rantej Panchayat which, according to the petitioner, is not separated or bifurcated and cannot be regarded as a new village. Therefore, it is prayed that the aforesaid notification be declared unconstitutional, null and void and to quash and set aside the same and resultantly the order dated 8.3.1999 whereby the administrator was appointed be also quashed and set aside.

3. The petition is contested by the District Development Officer by filing affidavit in reply whereby it is stated that the Government has followed the procedure envisaged under the Act and in the interest of the people of the village decision was taken to bifurcate.

4. The only contention which is canvassed by the learned advocate for the petitioner before me is that section 263 of the Act is not applicable to the facts of the present case and, therefore, the procedure adopted by the Government is not in conformity with the powers vested under the Act. According to him, Section 253 of the Act is applicable which envisages dissolution or supersession of the Panchayat for default.

5. Learend A.G.P. Mrs. Manisha Lavkumar has contended that affidavit filed on behalf of the District Development Officer itself is self-explanatory wherein it is categorically stated as under:

"4.1. It is stated that after collection of the necessary details and record, the Executive Committee of the District Panchayat passed a resolution on 24th June, 1998 and made a recommendation for bifurcation of Rantej Group Gram Panchayat and to provide status of a separate village to Pratapnagar. It is humbly submitted that thereafter the respondent No.2 forwarded a proposal on 17th July 1998 to the Development Commissioner of the State of Gujarat with the necessary details, record as well as details about the representations of the villagers. Resolution of the Gram Panchayat, Resolution of the Taluka Panchayat, Resolution of the District Panchayat and recommendation of local Member of Legislative Assembly (M.L.A.) etc., for bifurcation of Rantej Group Gram Panchayat."

In the affidavit in reply filed on behalf of respondent No.2 it is further stated that the Gram Panchayat by its resolution dated 21.1.1999 resolved that the Gram Panchayat should be bifurcated and a separate Gram Panchayat should be provided to Pratapnagar. In view of the aforesaid resolution, Government followed procedure prescribed under Section 7 of the Act and after consultation with the Gram Panchayat, Taluka Panchayat and District Panchayat appropriate resolutions were passed and thereafter details and record were forwarded to the Development Commissioner and to the State Government. Thereafter the State Government, after careful consideration, through its Panchayat Rural Housing and Rural Development Department has issued notification on 17.2.1999 under the provisions of Section 7 of the Act after consultation with the concerned village Panchayat, Taluka Panchayat and District Panchayat, to divide the Group Gram Panchayat and to provide separate Gram Panchayats to village Rantej and village Pratapnagar. It is also mentioned in the said affidavit in reply that thereafter on 8.3.1999 administrator for Rantej and Pratapnagar was appointed under Section 263 (1) of the Act and both the notifications were served upon the Talati-cum-Mantri as well as Sarpanch of village Rantej on 10.3.1999.

4. Relying upon the aforesaid sworn version on behalf of respondent No.2, learned A.G.P. contended that Section 263 (1) of the Act is applicable and not Section 253 of the Act as canvassed by the learned advocate for the petitioner.

5. Having considered the submissions canvassed by the learned advocates for the parties, averments made in the petition and the counter submissions made by the learned advocates for the respondents, it would be clear that the Government has followed the procedure prescribed under the Act and upon request made by the Executive Committee of the Panchayat, Government has taken decision for bifurcation of Rantej and to provide a separate Panchayat to Pratapnagar after consultation with the concerned authorities and thereafter the Administrator was also appointed who has taken charge. It appears from the averments made in the petition that the petitioner being elected Sarpanch he thought that to snatch away powers from him, in colourable exercise of powers, the aforesaid notification was issued by the respondents. The aforesaid apprehension of the petitioner is baseless and misconceived. When the Government has taken decision in the larger interest of the population of both the Panchayats it cannot be said to be arbitrary, unjust, unconstitutional or void.

6. In view of the aforesaid discussion, no interference is called for with the decision taken by the Government for issuance of the impugned notification. On the contrary, the said action of the Government is in conformity with the requirement of the Act and the notification was issued in the interest of both the Panchayats so that the administration can be smoothly run. Hence the petition being devoid of any merit is liable to be rejected and accordingly it is rejected. No order as to costs. Rule is discharged. Interim relief granted earlier stands vacated.

(karan)